BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

RICHARD S. SERRANO Claimant	}
VS.))))))
MODERN AIR CONDITIONING, INC.) Docket No. 176,402
Respondent AND	
FEDERATED MUTUAL INSURANCE	
Insurance Carrier AND	
ALLIED INSURANCE COMPANY	}

ORDER

ON the 22nd day of February, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of a Preliminary Order entered by Administrative Law Judge Floyd V. Palmer dated January 6, 1994, came on for oral argument by telephone conference.

The claimant appeared by and through his attorney, Diane F. Barger, of Emporia, Kansas. The respondent, Modern Air Conditioning, and its insurance carrier, Federated Mutual Insurance, appeared by and through their attorney, John G. Atherton, of Emporia, Kansas. The respondent, Modern Air Conditioning, and it insurance carrier, Allied Insurance Company, appeared by and through their attorney, John A. Bausch, of Topeka, Kansas. There were no other appearances.

Oral motion by Diane F. Barger, the attorney for the claimant, was made alleging personal prejudice against said attorney by Appeals Board Member Gary M. Korte and requested he remove himself from the Appeals Board panel and further that he voluntarily withdraw from all appeals to the Workers Compensation Appeals Board wherein Diane F. Barger is the attorney of record for a party.

Appeals Board Member Gary M. Korte finds no basis for a finding of any conflict of interest or prejudice that would affect the rights or interests of any party to this action and

accordingly does not disqualify himself.

The Appeals Board finds that the decision regarding withdrawal in this matter is a personal decision to be made by Appeals Board Member Gary M. Korte. The Appeals Board does not have jurisdiction to decide this issue.

WHEREFORE, it is the finding, decision and order of the Appeals Board that the motion by Diane F. Barger, attorney for the claimant, for Appeals Board Member Gary M. Korte to withdraw from this matter and for the appointment a Member Pro Tem in his place should be and is hereby denied.

Dated this _____ day of February, 1994. BOARD MEMBER BOARD MEMBER BOARD MEMBER BOARD MEMBER

cc: Diane F. Barger, P.O. Box 626, Emporia, Kansas 66801 John G. Atherton, P.O. Box 624, Emporia, Kansas 66801 John A. Bausch, P.O. Box 2217, Topeka, Kansas 66601 George Gomez, Director

BOARD MEMBER